

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

LIBERTY NORTHWEST INS., CORP., and)	
3Bs TRANSPORTATION,)	Filed Nov. 18, 2004
)	
Plaintiffs,)	IC 01-501192
v.)	(15-000073)
)	
CHRISTOPHER CRAWFORD and)	
SCOTT CHAPMAN,)	
)	DECLARATORY RULING
Defendants.)	RE: SUBROGATION
)	
)	
)	
)	

INTRODUCTION

On April 12, 2004, Liberty Northwest Insurance and 3Bs Transportation (Plaintiffs) filed a complaint seeking to satisfy a subrogation interest in funds recovered by Christopher Crawford and his attorney Scott Chapman (Defendants). Plaintiffs maintain they have a statutory right to subrogate Defendants' recovery. Defendants maintain that Plaintiffs do not have a right to subrogate the full amount of the recovery.

The issue is whether and to what extent Plaintiffs have a subrogation interest in a third-party recovery realized by Defendants as a result of a work-related auto accident. The Commission will construe all pleadings of the parties pursuant to Rule 15 of the Judicial Rules of Practice and Procedure (JRP), regarding declaratory rulings.

FACTS AND BACKGROUND

1. Christopher Crawford was a long-haul operator and driver for 3Bs Transportation (3Bs). 3Bs carried workers' compensation insurance to cover Crawford.

2. On February 19, 2001, Crawford was involved in an auto accident while driving as an employee of 3Bs. The accident resulted in Employer's surety paying out \$19,723.43 in total workers' compensation benefits: \$11,449.87 for medical bills and \$8,273.56 for time loss. Further, the accident resulted in Crawford and his wife filing a civil action in California against the other driver and his employer. This civil action resulted in a settlement for \$21,000.00. Crawford received \$15,750.00, or three-fourths, of the settlement; the rest went to his wife. Crawford's settlement money currently sits in trust with his attorney, Scott Chapman. Hearing Transcript 16:5 - 14.

3. Following the third-party settlement, Plaintiffs requested the subrogated amount from Defendants. Defendants do not dispute that Plaintiffs notified them of the subrogated interest prior to settlement of the civil action. The record indicates that Defendants ignored all requests for subrogation and did not respond in any way toward reimbursing Plaintiffs for any part of their subrogation claim. To date, Defendants have made no attempt to pay Plaintiffs their subrogation interest.

4. On September 2, 2004, a hearing was conducted in Lewiston with the Commissioners presiding, en banc. Monte R. Whittier represented Plaintiffs. Scott Chapman represented Defendants. The parties submitted documentary evidence at the hearing. Briefs were subsequently filed with the Commission. The case is now ready for a decision.

JURISDICTION

5. A controversy exists in this case due to the pleadings and relief requested by Plaintiffs and Defendants. Furthermore, the outcome of this dispute is one of financial interest to Plaintiffs due to their subrogation right as set forth in Idaho Code, § 72-223. Rule 15(C), JRP.

DECLARATORY RULING

6. Idaho Code, § 72-223 creates Plaintiffs' subrogation right. Under § 72-223, an Employer/Surety that has paid out benefits to/for an injured employee has the right to recover those monies from any third-party settlement or award granted to the injured worker.

7. In their post-hearing brief, Defendants rely on the "make whole" doctrine to conclude that Plaintiffs are not entitled to subrogation. In Defendants' own words, "Defendants have been unable to find any Idaho authority for their proposition" regarding the "make whole" doctrine. Defendants rely on authority from sister jurisdictions in an attempt to argue the "make whole" doctrine should apply in this Idaho case. However Defendants attempt to describe their theory of "make whole," such a theory has been specifically rejected in the case of *Hall v. Young's Dairy Products Company*, 98 Idaho 562, 564, 569 P.2d 907 (1977). The Commission is not persuaded by Defendants' argument, especially when Idaho case law clearly answers the issue before us.

8. Idaho law provides that in circumstances where a third-party recovery is less than Employer's total subrogation interest, Employer has a right to the entire third-party recovery. This result occurs even though it leaves the injured worker with nothing from the recovery. *Hall*, 98 Idaho 562; *Charters v. Barrett Trucking & Insurance Co, of the West*, IC 15-000061 (2003). The *Charters* decision is attached to this ruling. Plaintiffs have a legitimate subrogation interest in Defendants' recovery and may take the entire recovery. Plaintiffs paid out \$19,723.43 in Crawford's interest and have a right to recover those monies. The injured worker and his wife recovered a total of \$21,000 from their third-party settlement.

9. Idaho law also provides, however, that any subrogated recovery must be reduced by a

proportionate share of costs and attorney fees as incurred by the employee who obtained the recovery. Idaho Code, § 72-223(4). Defendants indicate that \$7,183.15 was incurred as costs in the third-party litigation. Chapman Deposition p. 14, ll. 3 – 5. Since Defendant Crawford received three-fourths (\$15,750.00) of the \$21,000 settlement, Plaintiffs contend that three-fourths of the costs should be assessed to Crawford totaling \$5,387.36. Plaintiffs argue they are entitled to the \$15,750.00, less Crawford's share of the costs, totaling a final subrogation amount of \$10,362.64.

10. Plaintiffs maintain they should be granted the entire \$10,362.64 without consideration for Chapman's attorney fees. Plaintiffs assert Defendant Chapman violated certain standards of professional conduct in failing to reimburse the subrogated claim to Plaintiffs. The Commission does not have jurisdiction to answer this question.

11. As mentioned earlier, Idaho law affords the attorney recovering a third-party settlement a proportionate share of his fees for those services. Idaho Code, § 72-223(4). Defendants have presented no showing whatsoever of the attorney fees incurred in recovering the third-party settlement. Defendants' only evidence regarding fees comes from a statement made in a deposition. There is no bookkeeping entry to support Defendants' assertion of fees. It is clear, however, that Plaintiffs should not receive the full, subrogated claim through the services of another's labor. *Hall*, 98 Idaho at 565. In the absence of any factual evidence, the Commission will utilize its IDAPA Rules concerning attorney fees. In situations where settlement is reached without trial, a reasonable fee of 25% of the available funds is deemed appropriate. IDAPA 17.02.08.033.01(e)(i). Thus, Defendants are entitled to retain the sum of \$2,590.66 as attorney fees in collecting the subrogated claim of Plaintiffs. Thus, Plaintiff's

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subrogated recovery should be reduced to the amount of \$7,771.98 (10,362.64 – 2,590.66).

12. Plaintiffs request an award of attorney fees for bringing this action to collect their subrogated interest. During his deposition, Chapman admitted that he never responded to any of Plaintiff's subrogation demands following the third-party settlement. Chapman Deposition 18:23 – 19:3. Chapman has presented no legal or factual justification for failing to reimburse Plaintiffs in this matter. Further, the Commission finds that Chapman's actions in defending the refusal to reimburse the subrogated claim are frivolous. As a result, Plaintiffs are entitled to an award of attorney fees for having to bring this action before the Commission. Idaho Code, § 72-803.

13. Plaintiffs have requested the sum of \$5,000 as reasonable fees for prosecuting this claim against Defendants. Interestingly, Defendants do not object to this calculation of fees. The Commission finds, however, that \$5,000 would be more than 50% of the amount awarded to Plaintiffs herein for their subrogated interest. Such a sum for attorney fees is excessive and not reasonable. Using the IDAPA Rules of the Commission as a guideline in this matter, the Commission finds that 30% of the benefits awarded to Plaintiffs is reasonable under the circumstances. IDAPA 17.02.08.033.01(e)(ii). Thus, Defendants shall pay to Plaintiffs the sum of \$2,331.59 (7,771.98 x 30%) as reasonable attorney fees in this matter.

14. For the above reasons, the petition by Plaintiffs for a Declaratory Ruling should be, and is hereby, GRANTED. As a result, Plaintiffs shall have judgment and award against Defendants, jointly and severally, in the total amount of \$10,103.57 (7,771.98 + 2,331.59).

IT IS SO ORDERED.

DATED in Boise, Idaho on this _18th day of November, 2004.

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INDUSTRIAL COMMISSION

____/s/_____
R.D. Maynard, Chairman

____/s/_____
Thomas E. Limbaugh, Commissioner

____/s/_____
James F. Kile, Commissioner

ATTEST:

____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the *18th* day of November, 2004, a true and correct copy of the foregoing **DECLARATORY RULING RE: SUBROGATION** was served by regular United States Mail upon each of the following:

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____/s/_____